

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

OP.No. 32882 of 2002(M)

PETITIONER:

1. JOHN JOSEPH,
PULINTHARA VEEDU, MANNATHI CHIRA,
KAVILUNPARA, KOZHIKODE.
2. JAYA KUMAR, PADANILATHIL,
PALLIPPURAM P.O., CHERTHALA, DIST. ALAPPUZHA.

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENTS:

1. THE WELFARE FUND INSPECTOR,
THE KERALA TODDY WORKERS WELFARE FUND BOARD,
KOZHIKODE.
2. THE DEPUTY TAHSILDAR,
VADAKARA TALUK, VADAKARA, KOZHIKODE.
3. THE DEPUTY TAHSILDAR,
CHERTHALA, DIST. ALAPPUZHA.
4. M.K.ELIAS, MURIMATTATHIL,
KADIYANGADU P.O., KOZHIKODE.

GOVERNMENT PLEADER FOR R2,R3
SRI.A.K.JOHN, SC, KTWWF BOARD FOR R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP NO.55582/2002 IN O.P. NO.32882/2002

DISMISSED:

27.11.2007

SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF FINAL DETERMINATION ORDER DT.26.12.98.

P2: TRUE COPY OF DEMAND NOTICE DT.12.2.97.

P3: TRUE COPY OF R.R. NOTICE DT.5.7.02 ISSUED BY R2.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....
O.P. No.32882 of 2002
.....

Dated this the 27th day of November, 2007.

JUDGMENT

The petitioners, though admittedly were licencees of the toddy shops during the relevant year 1995-96 for which demand of Toddy Workers Welfare Fund arrears is made, are challenging recovery proceedings for recovery of Welfare Fund arrears on the ground that 4th respondent was carrying on business on their behalf. According to petitioners, final determination orders also prove that 4th respondent was in fact carrying on business. Standing Counsel submitted that as licencees petitioners are primarily responsible as employers and the arrangement between the petitioners and the 4th respondent in regard to running of toddy shop was not made known to the first respondent. Counsel for the petitioners has also relied on the decision of the Supreme Court in JOSEPH JOSEPH AND OTHERS V. STATE OF KERALA AND OTHERS (2002(3) SCC 8) wherein the Supreme Court has held that mere association in the abkari business will not make anybody liable. However, Supreme Court has categorically held that the licencee is primarily responsible. It is admitted that the abkari business which is controlled by statute was licensed to the

petitioners for the year 1995-96. If any other person was carrying on the business, it can be only as manager or agent of the petitioners and it is for the petitioners to ensure that their agent or manager complies with statutory provisions. Petitioners being licencees were undoubtedly the employers of the toddy workers employed in the toddy shops. However, 4th respondent also may become liable as employer if he was actually carrying on business. At the maximum, his liability is joint and several with that of the petitioners. In any case petitioners as licencees were employers and cannot escape from liability. The O.P. is therefore devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms